IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Babloo Vs. State of Rajasthan
(D.B. Criminal Appeal No.782/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 21-6-2002 in Sessions Case No.110/2001 (4/1999) passed by Shri Anil Kumar Surolia, RHJS, Additional Sessions Judge (Fast Track) Jhunjhunu.

Date of Judgment: April 26, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Ajay Kumar Jain, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Confession of guilt put in the mouth of appellant by a witness is the basis of finding of conviction arrived at by learned Additional Sessions Judge (Fast Track) Jhunjhunu in the judgment dated June 21, 2002 whereby the appellant was sentenced under section 302 IPC to suffer imprisonment for life and fine of Rs.2000/-, in default to further suffer simple imprisonment for two months.

2. A written report was submitted by informant Prabhati Lal (Pw.1) at Police Station Buhana on December 10 1998 wherein it was stated that dead body of Mehu Ram was lying in a pool of blood in front of house of one Sugna Ram. Informant had suspicion that Babloo might have killed

Mehu Ram by sharp edged weapon. On that report case under section 302 IPC was registered and investigation commenced. Statements of witnesses under section 161 CrPC were recorded appellant was arrested necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Jhunjhunu. Charge under section 302 IPC was framed against the accused, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 8 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard learned counsel for the appellant and learned Public Prosecutor and with their assistance scanned the material on record.

HOMICIDAL DEATH:

4. Since presence of eye witnesses could not be secured the prosecution has relied on the circumstantial evidence. The first circumstance relied upon by the prosecution was that death of Mehu Ram was homicidal. We notice that as per post mortem report (Ex.P-12) following ante mortem injuries were found on the dead body:-

> 1. Incised wound 4½" x 2½" x 4" oblique transverse from zygotic and directed backward upto above left mastoid process, being at left pinna & ext. auditon meatus canal.
> 2. Incised wound just below left mastoid process (being cut upper end of stem mastoid muscle & upper part of trapensus muscle) 5½" x 2" x 2" transverse in direction.
> 3. Incised wound 2" x 1½" x ¼" medial & lower 3rd part of left forearm.
> 4. Abrasion 2½" x 1/8" in front of chest wall.

Having closely scrutinised the evidence of Dr. Girdhari Lal Meena (Pw.5), who performed autopsy on the dead body, we find that the prosecution is able to establish that the death of Mehu Ram was homicidal in nature.

EXTRAJUDICIAL CONFESSION:

5. Second incriminating circumstance relied upon by the prosecution was that the appellant made extra judicial confession of the guilt before Chhatu Ram (Pw.2) who in his deposition stated that on December 10, 1998 the appellant came to his house in wee hours and told him that on the preceding night he hit spade on the person of Mehu Ram who died instantly. He (appellant) then asked to save him. Relevant portion of the statement of Chhatu Ram reads thus:-

> "दिनांक 10.12.1998 को सुबह दिन निकलने से पहले की बात है बबलू मुलजिम मौजूदा अदालत मेरे घर आया और कहा कि मैं रात को सुगना राम के घर था। मृतक मेऊ राम सुगनाराम के घर आया और उसने मेरे साथ धुलाई की। मेरे हाथ से उसके फावडा गुदी में लग गया और उसकी मृत्यु हो गई। वह गलियारा में पडा हुआ है। आप हमारे रिश्तेदार हो मेरे को बचाने की कोशिश करो।"

Chhatu Ram further stated that he expressed his inability to help the appellant and went to village Balaya to meet his sister. He returned after two days and on 12th he informed the police about the confession made by the appellant. He admitted that the deceased was his nephew:-

> "मृतक मेऊराम मेरे परिवार में नहीं था, गांव के नाते भतीजा लगता था।"

Chhatu Ram disowned major part of his police statement (Ex.D-1):-

"फावडा और कस्सी अलग अलग होती है। मैंने पुलिस को बयान देते समय बता दिया था कि मुलजिम ने मेरे को बताया कि उसके फावडा की मेऊराम के गुदी में लग गई। यही बयान प्रदर्श डी-1 में फावडा की गुदी में लगना नहीं लिखा तो मैं क्या करूं । पुलिस बयान प्रदर्श डी-1 का हिस्सा ए से बी "मेऊराम के सिर में कस्सी की लग गई" मैंने नहीं लिखाया था।"

6. Evidently Chhatu Ram made the disclosure about the extra judicial confession of the accused for the first time in the police station though he met a number of persons he never told about the confession to any one else. He kept mum for two days and remained out of the village. The deceased was his nephew and he was not thickly related to the appellant.

7. Confessions may be divided into `Judicial' and `Extra Judicial'. Judicial Confessions are those which are made before the magistrate or in court, in the due course of legal proceedings and it is essential that they be made of the free will of the party and with full knowledge of the nature and consequences of the confession." Extra Judicial confessions are those which are made by the party elsewhere then before a Magistrate or in court. This term embraces not only express confessions of crime, but all those admissions and acts of the accused from which guilt may be implied.

8. Extra Judicial Confession may properly be made to any person or body of persons. It is not even necessary that the statement should have been addressed to any definite individual. It may have taken the form of a prayer. An extra judicial confession to be made to one who is not a person in authority and which is free from any suspicion as to its voluntary character and has also a ring of truth in it is admissible in evidence and deserves to be acted upon. Extra Judicial Confession made before stock witness who has

casually knowing the accused is not admissible.

9. In the United States, the prisoners confession, when the Corpus delicti is not otherwise proved has been held insufficient to warrant his conviction.

10. From the stand point of reason a confession may be subject to grave infirmative considerations, among others that it is extremely improbable that a person should accuse himself of a serious crime. It may have been made from some false hope of benefit or fear of injury and still be false. The mind of criminal may be excited or diseased or morbid. The general rule is, that each confession should be weighed by its own circumstance. The evidence of extra-judicial confession, though a weak type of evidence, can form the basis for conviction if the confession made by the accused is voluntary, true and trustworthy. It can be acted upon if the evidence of the person, before whom the extra judicial confession has been made by the accused, inspires confidence.

11. In the case on hand the evidence of Chhatu Ram appears to us highly unreliable and untrustworthy. It does not inspire confidence. There is nothing on record to show that Chhatu Ram and the appellant were ever friendly with each other. In the cross examination Chhatu Ram deposed that the appellant came to his house around 3-4 AM. "बबलू मुलजिम मेरे पास सुबह 3-4 बजे आया था।" It is difficult to believe that Chhatu Ram would permit a person casually known to him, to visit his house in the odd hours. Similarly why the accused, who was neither close relative nor a friend of the witness, would open his heart and accept his guilt before him.

12. We discard the testimony of Chhatu Ram for the following reasons:-

(i) Chhatu Ram kept mum for two days after the alleged confession of guilt was made before him. He never told about this to anyone else. Though he met his sister and a number of persons.

(ii) Chhatu Ram was the uncle of deceased and had interest in the success of prosecution case.

(iii) Chhatu Ram was neither a close friend nor near relative of the appellant.

(iv) It is highly unlikely that in the wee hours the appellant would go to the stranger and open his heart before him.

(v) In the statements under section 161 CrPC Chhatu Ram stated that appellant had confessed to have inflicted `Kassi blow' but at the trial he deposed that appellant had confessed to have caused injury with spade. This material contradiction proves the testimony of Chhatu Ram unreliable and untrustworthy.

RECOVERY OF SPADE:

13. Third incriminating circumstance relied upon by the prosecution against the appellant was that the spade allegedly used in commission of the offence got recovered at the instance of the appellant. As already noticed the star witness of the prosecution Chhatu Ram stated in his police statement (Ex.D-1) thus "मेऊराम के सिर में कस्सी की लग गई।" Chhatu Ram disowned the statement at the trial and deposed as under:-

"पुलिस बयान प्रदर्श डी-1 का हिस्सा ए से बी मेऊराम के सिर में कस्सी की लग गई, मैंने नहीं लिखाया था।"

Chhatu Ram further stated as under:-

"फावडा और कस्सी अलग अलग होती है।"

But vide recovery memo (Ex.P-7) spade allegedly got recovered at the instance of the appellant and in the bracket word `Kassi' also got incorporated.

"फर्द जप्ती आलाए कत्ल एक फावडा (कस्सी)!"

14. A look at the recovery memo (Ex.P-7) goes to show that the alleged weapon of offence got recovered from the house of Sugna Ram. It is inexplicable as to why Sugna Ram who could have been an important witness, was withheld. From the infirmities noticed by us we are of the view that the prosecution could not establish this circumstance beyond reasonable doubt.

15. The evidence adduced at the trial is not qualitatively such that on every reasonable hypothesis the conclusion is that appellant is guilty. The prosecution failed to establish beyond reasonable doubt that the charge under section 302 IPC is proved against the appellant. In the ultimate analysis we do not find that the evidence adduced by the prosecution created a network through which there is no escape for the appellant. The facts taken as a whole do not admit any inference of his guilt.

16. For these reasons, we allow the appeal and set aside the impugned judgment dated June 21, 2002 of learned Additional Sessions

Judge (Fast Track) Jhunjhunu. We acquit the appellant of the charge under section 302 IPC. The appellant Babloo, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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